KRISHNAN DARUMAN

v.

LECHIMUNISAMY NATU

COURT OF APPEAL, PUTRAJAYA
MOHAMED APANDI ALI JCA
LINTON ALBERT JCA
LIM YEE LAN JCA
[CIVIL APPEAL NO: P-02-223-01-2012]
31 DECEMBER 2013

LAND LAW: *Sale of land - Trust - Sale and purchase agreement - Land held on trust by trustee on behalf of beneficiary - Whether deposit and part payment of purchase price correctly paid according to sale and purchase agreement - Trustee died before execution of sale and purchase agreement - Whether beneficiary refused to complete sale - Specific performance of sale and purchase agreement - Whether beneficiary could only acquire interest for sale of land after estate had been administered - Whether beneficiary had capacity to enter into sale and purchase agreement for sale of land until administration of estate was completed*

The appellant entered into a sale and purchase agreement with the respondent. Under the said agreement, the respondent, who was the beneficial owner of the property ('the said land') agreed to sell the said land to the appellant for a total sum of RM378,972. The sum of RM37,897.20 was to be paid on or before the signing of the sale and purchase agreement as deposit and part payment of the purchase price and the balance of RM341,074.80 was to be paid within three months of the extract of letters of administration and the vesting order because the said land was held by one Krishnasamy s/o Nagappan ('the trustee') in trust for the respondent. However, the trustee died before the execution of the sale and purchase agreement. The respondent refused to complete the sale of the said land. The appellant then sought an order of specific performance of the sale and purchase agreement but the High Court refused to grant the relief sought and dismissed the appellant's claim on the basis that only RM18,948.60 was paid to the respondent representing 5% of the purchase price. The Judicial Commissioner ('JC') ruled that the other equivalent sum of RM18,948.60 represented by a cheque butt ('P48') and particulars of the cheque ('P8') were not sufficiently proved. Relying on *Punca Klasik Sdn Bhd v. All Persons in Occupation of the Wooden House Erected on a Portion of Land held under Grant No. 26977 for lot 4271 in the Township of Johor Bahru, Johor & Another Case* ('*Punca Klasik*') and *Chor Phaik Har v. Farlim Properties Sdn Bhd* ('*Chor Phaik Har*'), the JC further held that since the trustee had

A died, the respondent as beneficiary could only acquire his interest after the estate had been administered and until then, he had no capacity to enter into the sale and purchase agreement for the said land.

Held (allowing appeal with costs; setting aside decision of the High Court)

B **Per Linton Albert JCA delivering the judgment of the court:**

(1) The finding of the JC was perverse and plainly wrong because quite apart from the fact that exhs. P48 and P8 constituted evidence of payment, cl. 1 of the sale and purchase agreement clearly and C unequivocally stated that the sum of RM37,897.20 had been paid to and acknowledged by the respondent. The said sum represented the deposit and payment towards account of the purchase price. The JC ought to have given effect to the plain meaning of cl. 1 of the sale and purchase agreement which was not disputed. (para 2)

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(2) *Punca Klasik* had no application since s. 65 of the Land Enactment No. 1 and s. 214 of the NLC did not apply to the present appeal. It did not relate to the transfer of a part of any alienated land or part of an undivided share in that land. Similarly, the case of *Chor Phaik Har* related to an application for removal of caveat where E the Federal Court held that a beneficiary under an intestacy had no interest in the personal estate of the deceased until the administration of the deceased's estate was complete. Hence, the beneficiaries could not have covenanted to convey any title under the sale agreements. (paras 2-4)

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(3) The JC's reliance on these two cases was clearly misplaced as *Punca Klasik* was irrelevant and *Chor Phaik Hor* ought to have been distinguished. The JC was clearly wrong in holding that the respondent did not have the capacity to enter into the sale and purchase agreement and was as such, null and void. (paras 2 & 9)

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Case(s) referred to:

Besharapan Sdn Bhd & Ors v. Agroco Plantation Sdn Bhd & Anor [2006] 4 CLJ 878 CA ***(refd)***

Chor Phaik Har v. Farlim Properties Sdn Bhd [1997] 4 CLJ 393 FC ***(dist)***

Kersah La'usin v. Sikin Menan [1964] 1 LNS 57 HC ***(refd)***

H *Mulpha Pacific Sdn Bhd v. Paramount Corp Bhd [2003] 4 CLJ 294 CA* ***(refd)***

Nik Mohamed Salleh v. Tengku Besar Zabidah [1969] 1 LNS 121 FC ***(refd)***

Punca Klasik Sdn Bhd v. All Persons in Occupation of the Wooden House Erected on a Portion of Land held under Grant No. 26977 for lot 4271 in the Township of Johor Bahru, Johor & Another Case [1995] 4 BLJ 337 HC ***(not foll)***

I *Silimuthu v. Amalu & Anor [1981] 1 LNS 193 HC* ***(refd)***

Tan Swee Lan v. Engku Nik Engku Muda & Ors [1973] 1 LNS 156 FC ***(refd)***

Legislation referred to:
National Land Code, ss. 214, 327

For the appellant - Vincent Tey Wei Seng; M/s Jublin Tan & Tey
For the respondent - Harbhajan Kaur (Gowri Subbaiyah with her); M/s Sudesh Narinder & Partners

[Appeal from High Court, Pulau Pinang; Civil Suit No: 22-312-2009]

Reported by Sandra Gabriel

JUDGMENT

Linton Albert JCA:

[1] The facts relating to this appeal are brief and uncomplicated. The appellant entered into a sale and purchase agreement with the respondent dated 11 October 1997. Under the sale and purchase agreement the respondent who was the beneficial owner of the property held under Geran Mukim No. GM516 No. Lot 347 Mukim 7 Daerah Seberang Perai Selatan, Negeri Pulau Pinang (the said land) agreed to sell the said land to the appellant for a total sum of RM378,972 payable as follows: the sum of RM37,897.20 was to be paid on or before the signing of the sale and purchase agreement as deposit and part payment of the purchase price and the balance of RM341,074.80 within three months of the extract of letters of administration and the vesting order because the said land was held by one Krishnasamy s/o Nagappan (the trustee) in trust for the respondent. The trustee had died before the execution of the sale and purchase agreement. The respondent refused to complete the sale of the said land to the appellant and the appellant then filed a suit asking for an order of specific performance of the sale and purchase agreement but the High Court refused to grant the relief sought by the appellant and dismissed the appellant's claim.

[2] The appellant's claim was dismissed on the basis that only RM18,948.60 was paid to and received by the respondent representing 5% of the purchase price. The learned Judicial Commissioner ruled that the other equivalent sum of RM18,948.60 as evidenced represented by a cheque butt (exh. P48) and particulars of cheque (exh. P8) were not sufficiently proved. With respect we find that this finding is perverse and plainly wrong because quite apart from the fact that exhs. P48 and P8 constituted evidence of payment, cl. 1 of the sale and purchase agreement clearly and unequivocally stated that the sum of RM37,897.20 had been paid to and acknowledged by the respondent which said sum of RM37,897.20 represented 'the deposit and payment towards account of the purchase price'. The learned Judicial Commissioner ought to have

given effect to the plain meaning of cl. 1 of the sale and purchase agreement which was not disputed. (see *Mulpha Pacific Sdn Bhd v. Paramount Corp Bhd* [2003] 4 CLJ 294; [2003] 4 MLJ 357). Above all, the learned Judicial Commissioner ruled that in the circumstances aforesaid, the respondent was only a beneficial owner and had no authority to enter into a valid contract to sell the said land and that only the registered proprietor who, in this case, was the trustee, had the authority to sell the said land. It was further held that since the trustee Krishnasamy a/l Nagappan had since died, the respondent as beneficiary could only acquire his interest after the estate had been administered and until then, had no capacity to enter into the sale and purchase agreement for the said land. The learned Judicial Commissioner relied solely on *Punca Klasik Sdn Bhd v. All Persons in Occupation of the Wooden House Erected on a Portion of Land held under Grant No.26977 for lot 4271 in the Township of Johor Bahru, Johor & Another Case* [1995] 4 BLJ 337; [1996] 5 MLJ 92 and *Chor Phaik Har v. Farlim Properties Sdn Bhd* [1997] 4 CLJ 393; [1997] 3 MLJ 188. With respect the learned Judicial Commissioner's reliance on these two cases was misplaced because *Punca Klasik* is irrelevant and *Chor Phaik Har* ought to have been distinguished. In any case *Chor Phaik Har* stood in woeful isolation among a plethora of other authorities which held a contrary view. In *Punca Klasik* the plaintiffs bought the land from the estate of Syed Hassan in 1994 and became the registered proprietor of the land. Two separate portions of the land were occupied by one Lim Kim Leung (Lim) and Ng Eng Hing (Ng) who claimed to be owners of the two portions respectively, Lim's claim to his portion was based on the fact that his father had purchased it from one Syed Ali in 1962 and Ng's claim was similarly based on the fact that his father also purchased his portion from one Syed Abdullah in 1951. Both Syed Ali and Syed Abdullah were beneficiaries of the estate of Syed Hassan. It was held that the interests of the defendants' fathers were not registered pursuant to s. 65 of the Land Enactment (No 1) 1950 and since these portions were not dealt with in accordance with Pt V of the Land Enactment (No 1) 1950, the agreements that were entered into between the parties must be regarded as null and void and of no effect within the meaning of s. 63 of the Land Enactment (No 1) 1950. Section 214 of the National Land Code ('the NLC') prohibits totally the transfer of a part of any alienated land or a part of an undivided share in that land.

[3] In *Chor Phaik Har*, 3/4 undivided share of the property known as Ayer Hitam Estate which consisted of two parcels of land were acquired by one Chor Bah Say (the deceased) who died intestate in 1949 and his 3/4 undivided share devolved to his estate. The other 1/4 undivided share was acquired by a company. In 1992 the company and the executors and trustees of the beneficiaries of the deceased's estate sold

the two parcels of land to the respondent. The appellant who was a direct beneficiary of the estate lodged a caveat on the two parcels of land. The High Court allowed the respondent's application for removal of the appellant's caveat pursuant to s. 327 of the NLC. On appeal the Federal Court held that in law a beneficiary under an intestacy has no interest or property in the personal estate of a deceased person until the administration of the latter's estate is complete and distribution made according to the law of distribution of the intestate estate. Hence, the beneficiaries could not have covenanted to convey any title to the respondent under the sale agreements and the respondent, therefore, cannot rely on those agreements to justify their status as 'persons aggrieved' under s. 327 of the NLC.

[4] Clearly, *Punca Klasik* has no application in the present appeal because here s. 65 of the Land Enactment (No 1) 1950 did not apply nor s. 214 of the NLC 1965 because it did not relate to the transfer of a part of any alienated land or part of an undivided share in that land. We shall now revert to some of the authorities which hold a contrary view to that expressed in *Chor Phaik Har*. It is perhaps appropriate to begin by setting out the statement of the law relating to the sale of land by a beneficial owner where the land is part of the estate of a deceased person where the estate has not been administered. In *Kersah La'usin v. Sikin Menan* [1964] 1 LNS 57; [1966] 2 MLJ 20 at p. 22 Raja Azlan Shah J (as His Majesty then was) stated as follows:

> The first consideration is whether the plaintiff could enter into a contract with the defendant's (deceased) father involving a subject matter which was then not subsisting in the sense that the said land was still in his mother's name. It is not disputed that he was the sole beneficiary and that he was in such a position that when the time came he could perfect the title of the purchaser. The fact that at the date of contract the vendor had neither title nor power to call for title is not of itself an answer to a suit of specific performance by the purchaser.

[5] In *Silimuthu v. Amalu & Anor* [1981] 1 LNS 193; [1983] 1 MLJ 190 the defendants who were the beneficiaries of the estate of one Krishnan entered into a sale agreement with the plaintiff in relation to a piece of land which formed part of the estate. *Kersah La'usin* was followed and this is what Yusof Abdul Rashid J said at p. 191:

> I have no doubt at all that the defendants were legally competent to enter into the agreement in the terms as stated above. I do not agree that the agreement was void *ab initio*. There is no proposition of law, to my knowledge, which prohibits beneficiaries of an estate of a deceased person from entering into an agreement of this nature. Instead there are authorities which point to the fact that beneficiaries are competent to enter into such agreement even before Letter of Administration has been granted to them.

In *Tan Swee Lan v. Engku Nik Engku Muda & Ors* [1973] 1 LNS 156; [1973] 2 MLJ 187 the facts of the case are set out in the judgment of Ali FJ at p. 187 as follows:

> By a written agreement dated April 12, 1958, the respondents agreed to sell and the appellant agreed to buy a piece of land held under Grant 2483, Lot 2451 in the township of Kuala Terengganu. The agreed price was $3,600 of which $750 was paid by the appellant as down payment. The balance was to be paid when the land was transferred to the appellant. On the date of the agreement the land was part of the estate the late Engku Muda bin Engku Besar and all the respondents were said to be beneficiaries of the estate.

[6] The respondents failed to take steps to have the land transferred to the appellant. The appellant claimed specific performance of the agreement. The High Court dismissed the claim on the ground that the claim was statute barred but on appeal, the Federal Court held that it was not statute barred. Hence the claim for specific performance was allowed.

[7] In *Nik Mohamed Salleh v. Tengku Besar Zabidah* [1969] 1 LNS 121; [1971] 1 MLJ 73 one Nik Abdul Majid who had since died held the title to a parcel of land which was sold by his heirs to the respondent. His heirs were his mother, one Nik Ti, his wife, the second defendant and his son the third defendant who entered into an agreement dated 18 November 1948 with the respondent to sell the land to the respondent. The said land was subsequently transferred to the appellant as administrator of the estate of Nik Ti. The respondent claimed specific performance of the agreement. The learned trial judge gave judgment in favour of the respondent. On appeal before the Federal Court it fell to be determined whether the agreement was illegal because the three signatories were not the registered owners of the land. In dismissing the appeal, Azmi LP delivering the judgment of the court had this to say at p. 75:

> In my view, however, the said agreement may be enforced against the second defendant, third defendant and the estate of Nik Ti on the authority of *Horrocks v. Rigby* referred to with approval by their Lordships of the Privy Council in *Abdul Karim Basma v. Weekes & Ors*.
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> In *Abdul Karim Basma v. Weekes & Ors* the plaintiff alleged that by an agreement dated 29 November 1946, the first, second and third defendants agreed to sell two houses of which they were tenants in common for Pound 1,900 and that thereupon the sum of Pound 633.6s.8d was paid to each of the three defendants in full satisfaction of the purchase price. Subsequently these three defendants purported to convey the property to the fourth defendant. The plaintiff then claimed for specific performance of his agreement with the first three

> defendants. The defence was denial of this agreement. It transpired later that the first defendant had no power to convey her interest in the land.
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> Their Lordships of the Privy Council in restoring the judgment of the trial judge (Wright J) held that although the first defendant had no power to convey her interest, there were no special circumstances which would make it wrong to grant specific performance of the contract in regard to the interests which belonged to the second and third defendants and, therefore, the plaintiff was entitled to enforce the contract against the second and third defendants so as to require conveyance to him of their two one-third shares, with abatement of the purchase price in respect of the interest of the first defendant.

and at p. 76 concluded thus:

> In my judgment the High Court was quite right in ordering specific performance of the sale agreement. This is clear from the following passage in the judgment of the Lord Chancellor (Lord Westbury) in *Holroyd v. Marshall* [1862] 10 HLC 191, 211; 11 ER 999, 1007:
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> > ... if a vendor ... agrees to sell ... property ... of which he is not possessed at the time, and he receives the consideration for the contract, and afterwards becomes possessed of property answering the description in the contract, there is no doubt that a Court of Equity would compel him to perform the contract ... For if a contract be in other respects good and fit to be performed, and the consideration has been received, incapacity to perform it at the time of its execution will be no answer when the means of doing so are afterwards obtained.

[8] In *Besharapan Sdn Bhd & Ors v. Agroco Plantation Sdn Bhd & Anor* [2006] 4 CLJ 878 the second and third appellants who were not registered proprietors entered into a sale and purchase agreement with the second respondent in respect of a piece of land on 1 February 1989. The second respondent subsequently sold the land to the first respondent in 1993. The Court of Appeal had to determine the validity of the 1989 and 1993 agreements because not being registered proprietors at the material time, the second and third appellants had no right or interest in the land. Arifin Zakaria JCA (as he then was) delivering the judgment of the Court of Appeal said:

> On the above authority it is our view that even though on the date of execution of the 1989 Agreement the second and third appellants did not have any registered right or interest in the subject land that does not render the agreement which is otherwise valid and enforceable to be void or invalid. We hold that second and third appellants at the material time have sufficient interest in the subject land to enter into a binding agreement by which they agreed to transfer the subject land when the title or interest in the subject has been registered in their

A names. In other words the parties agreed that the agreement will only become enforceable the moment the second and third appellants' right or interest in the subject land is registered under the Ordinance. We find no difficulty with such an arrangement.

[9] The learned Judicial Commissioner was clearly wrong in holding B that the respondent did not have the capacity to enter into the sale and purchase agreement and was as such null and void.

[10] In the circumstances and for the reasons aforesaid the appeal is allowed with costs of RM30,000 here and below. The decision of the C High Court is set aside and judgment entered for the appellant in terms as prayed for in the statement of claim.

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